

[NOTE: Each PPA request is evaluated on its own merits. The full text of recent prospective purchaser agreements is provided for information purposes only. The Model Prospective Purchaser Agreement will serve as a starting point for structuring future agreements.]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

IN THE MATTER OF:)	
)	
Avtex Fibers Superfund Site)	Docket No.: CERC-PPA-99-07
)	
UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE
RESPONSE, COMPENSATION, AND)	THE INDUSTRIAL DEVELOPMENT
LIABILITY ACT OF 1980, 42 U.S.C.)	AUTHORITY OF THE TOWN OF
§ 9601, <u>et seq.</u> , as amended.)	FRONT ROYAL AND THE COUNTY
_____)	OF WARREN, d/b/a ECONOMIC
		DEVELOPMENT AUTHORITY, et al

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue (“Agreement”) is made and entered into by and between the United States, on behalf of the United States Environmental Protection Agency (“EPA”), and the Industrial Development Authority of the Town of Front Royal and the County of Warren, d/b/a Economic Development Authority (“EDA”); the County of Warren, Virginia (“Warren County”); the Town of Front Royal, Virginia (“Front Royal”); the Lord Fairfax Soil and Water Conservation District, (“Conservation District”) and the Valley Conservation Council (“Conservation Council”).

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §

9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EDA, Warren County and Front Royal are the Prospective Purchasers of the Property which is the subject of this Agreement.

4. This Agreement pertains to approximately 500 acres of property located in Warren County, Virginia, both within and without the boundaries of Front Royal. The Property is located on the attached "Site Location Map", Exhibit "A", prepared by North American Realty Advisory Services. The Property is further identified in the attached Exhibit "B". Exhibit "B" is drawing No. 295-194 dated September 29, 1999, prepared by Marsh & Legge, Land Surveyors, P.L.C., of Winchester, Va. The Property was formerly owned by Avtex Fibers-Front Royal, Inc. ("Avtex"). Avtex filed a Voluntary Petition for Relief Pursuant to Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Pennsylvania on or about February 6, 1990, docketed at 90-20290T. On April 12, 1990, Anthony H. Murray, Jr., Inc., was appointed as Trustee for the Estate of Avtex.

5. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VI (Due Care/Cooperation), VII (Certification), VIII (United States' Covenant Not To Sue), and IX (Reservation of Rights), the potential liability of the Settling Respondents for any Existing Contamination which would otherwise result from Settling Respondents becoming the owners/operators of the Property or grantees of any easements on the Property. In addition, another purpose of this Agreement is to grant to the Conservation District and the Conservation Council the covenant not to sue set forth in Section VIII and the

contribution protection afforded under Section XVIII of this Agreement. The covenant not to sue and contribution protection is granted under this Agreement to the Conservation District and the Conservation Council by the United States in consideration of their agreement to become grantees along with the United States, FMC Corporation and General Chemical Corporation on a Conservation and Environmental Protection Easement and Declaration of Restrictive Covenants (the Conservation Easement) granted from the Trustee which places use restrictions on the Property. In addition, pursuant to Section 104(j)(2) of CERCLA, 42 U.S.C. § 9604(j)(2), the Conservation District will accept any property interest vested in the United States pursuant to the Conservation Easement following completion of the cleanup at the Property pursuant to the Consent Decree identified in Paragraph 18 of this Agreement.

6. The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondents.

7. The resolution of this potential liability, in exchange for the provision by the Settling Respondents to EPA of substantial benefits, is in the public interest.

II. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

a. "Avtex" shall mean Avtex Fibers-Front Royal, Inc.;

b. "Conservation Council" shall mean the Valley Conservation Council;

- c. “Conservation District” shall mean the Lord Fairfax Soil and Water Conservation District, a political subdivision of the Commonwealth of Virginia;
- d. “EDA” shall mean the Industrial Development Authority of the Town of Front Royal and the County of Warren, d/b/a Economic Development Authority, a political subdivision of the Commonwealth of Virginia ;
- e. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;
- f. “Existing Contamination” shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Property as of the effective date of this Agreement;
- g. “Front Royal” shall mean the Town of Front Royal, Virginia, a body politic and a political subdivision of the Commonwealth of Virginia;
- h. “Parties” shall mean the United States, on behalf of EPA, EDA, Warren County, Front Royal, the Conservation District and the Conservation Council;
- I. “Property” shall mean certain real property of approximately 500 acres located in Warren County, Virginia, which is identified in Exhibit “B.” The Property is bounded on the west partially by the South Fork of the Shenandoah River and partially by the exterior boundary lines of Rivermont Acres Subdivision and various property owners to the west of the South Fork of the Shenandoah River, which river is to the east of Rivermont Acres (hereinafter the Avtex property on the west bank of the river shall be designated “West Bank Acres ”); is bounded on the north and east by the Allied (Chemical) Site and again along the north by other privately owned properties that run along the northern boundary of the former parking lot on the north side of

Kendrick Lane ; and on the east by Randolph Macon Academy (a private school); and then on the southeast by West Main Street; then again on the east by Kerfoot Avenue; then on the south by Salem Avenue; then again along the south by Luray Avenue (old State Route 619). The property does not include 77.16 acres known as the Allied Chemical/General Chemical plant, which property was purchased in August of 1986 by Avtex from General Chemical Corporation;

j. “Prospective Purchasers” shall mean EDA, Warren County, and Front Royal;

k. “Settling Respondents” shall mean EDA, Warren County, Front Royal, the Conservation District and the Conservation Council;

l. “Trustee” shall mean Anthony H. Murray, Jr., Inc., the trustee appointed for the Avtex Estate;

m. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities;

n. “Warren County” shall mean the County of Warren, Virginia, a body politic and a political subdivision of the Commonwealth of Virginia.

III. STATEMENT OF FACTS

9. The Property consists of approximately 500 acres located on both banks of the South Fork of the Shenandoah River. The Property consists of :

a. The Avtex Site. The Avtex Site was owned and operated by American Viscose Corporation (“American Viscose”) from 1940 to 1963. In 1963, American Viscose sold the Avtex Site to FMC Corporation (“FMC”). FMC owned and operated the Avtex Site until 1976 when it was sold by FMC to Avtex Fibers, Inc. In 1978, Avtex Fibers, Inc. conveyed the Site to Avtex Fibers-Front Royal, Inc., a

wholly owned subsidiary of Avtex Fibers, Inc. The Avtex Property has been delineated into the following areas:

- 1) The first area identified on Exhibit “B” consists of approximately 192.95 acres from the Norfolk and Southern Railroad right-of-way towards the east, bounded on the west by the railroad; and on the northwest by the 10 acre parcel identified as the “Parking Lot”; on the east by Randolph Macon Academy (a private school); and then on the southeast by West Main Street, then again on the east by Kerfoot Avenue; and on the south by Salem Avenue. This area was where the former plant buildings, manufacturing support areas (such as the cooling tower, water softener, and lead shop), chemical storage areas, loading areas and storage areas for obsolete equipment of the former Avtex Fibers plant and operations were located. This area includes the Parking Lot, Office Building Site, Business Park, and Ed Stump Park.
- 2) The second area on Exhibit “B” consists of approximately 240.67 acres from the west side of the Norfolk and Southern Railroad right-of-way westward towards the South Fork of the Shenandoah River; bounded on the west by the South Fork of the Shenandoah River; on the north by the Allied (Chemical) Site; on the east by the Norfolk and Southern Railroad right-of-way; and on the south by the extension of Luray Avenue (old State Route 619).

b. West Bank Acres. The third area of the Property is approximately 70.46 acres as outlined on Exhibit “B” and consists of lots located on the west side of the South Fork of the Shenandoah River, and open space areas, together all known as “West Bank Acres”. West Bank Acres is located within Warren County but outside of Front Royal.

10. Throughout the history of the manufacturing operations at the Avtex Site, hazardous substances were generated, released and disposed of at the Property. The Property is a part of the Avtex Federal Superfund Site which EPA listed on the CERCLA National Priorities List (“NPL”) on June 10, 1986, and has been the subject of the several removal and remedial actions performed by EPA and by potentially responsible parties (“PRPs”). Any property which was exposed or might have been exposed to hazardous substances generated, released and disposed of at the Property is subject to the Avtex Superfund Site NPL listing because a “facility” under CERCLA is any area where a hazardous substance has come to be located.

11. On November 16, 1989, EPA filed a Notice of Lien pursuant to Section 107(l) of CERCLA in favor of the United States upon all real property and rights to such property subject to EPA’s removal and response actions taken as a result of the release and threat of release at and from the Property. The lien was duly recorded with the Clerk of the Circuit Court of Warren County, Virginia at Deed Book 415 beginning at page 720.

12. On or about February 6, 1990, Avtex Fibers filed a voluntary petition in the United States Bankruptcy Court for the Eastern District of Pennsylvania under Chapter 11 of Title 11 of the United States Code (“hereinafter the bankruptcy proceeding”).

13. On or about April 12, 1990, Anthony H. Murray, Jr., Inc. was appointed the Trustee for the Debtor and the Trustee has duly qualified and is so acting.

14. On or about October 12, 1999, the Trustee filed its Plan of Reorganization (“the Plan”) in the bankruptcy proceeding. The Plan provides that EPA and FMC have allowed administrative claims for costs incurred in responding to the release and/or threat of release of hazardous substances at the Property.

15. As a part of the Plan, the Prospective Purchasers have executed a Real Estate Contract with the Trustee, contingent on the execution of this Agreement, for the EDA to purchase the Property. On November 23, 1999, the Bankruptcy Court issued an Order which approved the Plan. As part of the Plan, the Bankruptcy Court approved the Real Estate Contract and the Conservation Easement.

16. The transfer of title to the Property to the EDA pursuant to the terms and conditions of the Real Estate Contract is contingent upon the Parties entering into this Agreement.

17. The Prospective Purchasers represent, and for the purposes of this Agreement EPA relies on those representations, that the Prospective Purchasers have had no involvement with the Property, except for the limited activities conducted by the EDA, which activities are identified in Paragraph 31, below.

18. EPA has investigated and evaluated the prior use of the Property since 1982 when the Commonwealth of Virginia notified EPA of Virginia’s concern about groundwater contamination at the Property. EPA has taken numerous removal and remedial actions at the Property since that time. On July 9, 1999, the United States and FMC lodged a Consent Decree in United States of America v. FMC Corporation, Civil Action No. 5:99 CV 00054 (W.D.Va.) concerning the

Property (the “Consent Decree”). On October 21, 1999, the United States District Court signed and approved the Consent Decree. Pursuant to the terms of the Consent Decree, FMC will finance and perform, subject to certain conditions which are not relevant here, response actions which will result in the cleanup of the Property. These cleanup response actions are outlined in the attached Exhibit “C”.

19. The Prospective Purchasers intend to use the Property as shown in a manner similar to that shown on Exhibit “B.” More particularly, the Property will be used as follows:

- a. The area described in Paragraph 9.a.(1), except Ed Stump Park, will be used for light industrial and commercial uses.
- b. Ed Stump Park will be used for recreational use.
- c. The 240.67 acre tract described in Paragraph 9.a.(2) will be used for conservancy and recreational uses.
- d. The Parking Lot will be used for light industrial and commercial uses.
- e. West Bank Acres will be used for conservancy and recreational uses.

IV. A. PAYMENTS

20. In consideration of and in exchange for the United States’ Covenant Not to Sue in Section VIII and Removal of Lien in Section XX, the Prospective Purchasers agree to the following:

- a. The Prospective Purchasers will pay to the EPA the sum of Ten Thousand Dollars (\$10,000.00) within 30 days of the effective date of this Agreement. The Prospective Purchasers shall make all payments to EPA required by this Agreement in the form of a certified check or checks made payable to “EPA Hazardous Substance Superfund,” referencing the EPA

Docket Number: CERC-PPA-99-07 and the name and address of those Respondents or Respondent. Payment shall be forwarded to: U.S. EPA, Region III, Superfund Accounting, Box 360515, Pittsburgh, PA 15251-6515.

b. The EDA has executed documents (including a mortgage or deed of trust) satisfactory to and in favor of the United States, the Trustee and FMC which provide that when the Property or portions thereof are sold or transferred by the EDA to third parties for commercial or industrial use, the net proceeds (as defined below) from such sale or sales or transfers shall be divided and paid as follows: the first Sixty Thousand Dollars (\$60,000) of net proceeds shall be paid to the Trustee, the next Two Million Dollars (\$2,000,000) of net proceeds shall be paid to FMC Corporation; the balance of net proceeds shall be paid three percent (3%) to the Trustee, ten percent (10%) to EDA and eighty-seven percent (87%) to EPA and FMC in accordance with the ratio of A to B, where A is the total of the response costs spent by EPA and projected to be spent by EPA at the Property (after deducting reimbursement by the Commonwealth of Virginia, FMC and other PRPs to EPA) and B is the total response costs spent by FMC and projected to be spent by FMC at the Property (without deducting any reimbursement to FMC from other PRPs as to which PRPs FMC will be obligated to pay a portion of any proceeds FMC receives under this formula). For purposes of this subparagraph, "Property" shall not include the 25.88 acres of Ed Stump Park.

c. For purposes of subparagraph 20b., "net proceeds" shall mean the gross sales price (as defined below) of the Property or any portion thereof less direct closing costs and less the actual, reasonable, ordinary and necessary expenses incurred by the Prospective Purchasers in putting the Property or such portion thereof in developable and saleable condition; such expenses

to include but not be limited to demolition, cleanup, debris and waste removal, Property preparation costs and costs of infrastructure and improvements (including but not limited to necessary and appropriate street improvements and water and sewer and other utility services and marketing, advertising and general administrative expenses directly related to the Property); provided, however, such reductions from gross sales price to arrive at net proceeds shall not include such costs paid directly or indirectly from grant funds received by the Prospective Purchasers or by any costs or expenses incurred with respect to the construction of buildings on the Property. In the event that a portion of the Property is sold, as distinguished from a sale of the entire Property, the amount of the actual, reasonable, ordinary and necessary expenses incurred by the Prospective Purchasers to be deducted from the gross sales price of such portion of the Property shall be a fair and reasonable allocation of the total actual, reasonable, ordinary and necessary expenses incurred with respect to the entire Property.

d. For purposes of subparagraph 20b., “the gross sales price” of the Property or any portion of the Property shall mean the greater of (1) the actual sales price or (2) the fair market value of the Property or portion of the Property when valued for commercial or industrial use at the time of sale or transfer, assuming that the fair market value of the Property or such portion of the Property had increased to its then full potential by reason of the necessary and appropriate cleanup of the Property. In the event of any disagreement with respect to the fair market value of the Property or any portion thereof, the fair market value will be determined by a certified real estate appraiser selected by FMC and EPA. For purposes of this subparagraph, the “fair market value” of (1) the Parking Lot as shown on Exhibit “B” (approximately 10 acres) shall be \$7,000/acre; and (2) of the portion of the Property (8.13 acres) immediately north of Ed Stump

Park shall be \$9,000/acre, provided that the said 8.13 acres are used for recreational or public park usage, which fair market values are the “as cleaned-up” values stated in the appraisal dated May 3, 1999, by the McCormick Company, Inc.

e. The documents to be executed by EDA will provide that if EDA does not sell all of the Property designated in this Agreement for commercial or industrial use (with the exception of the buildings described below and real property of not more than 3.23 acres (identified on Exhibit “B”) consisting of the real property immediately underneath those buildings, real property adjacent to those buildings needed to comply with local parking requirements and the roadway leading from Kendrick Lane to those buildings, which exception shall apply only if those buildings are renovated by the Prospective Purchasers) prior to the eighth anniversary date of the effective date of this Agreement, the Prospective Purchasers shall have the option either (1) to pay FMC, the United States and the Trustee amounts equal to the net proceeds that would have been payable to FMC, the United States and the Trustee had the unsold Property been sold for fair market value on the ninetieth day preceding that eighth anniversary date, or with respect to the Parking Lot and the approximately 8.13 acres adjacent to Ed Stump Park, the values set forth above for those properties; or (2) to convey the unsold properties, with general warranties of title, to one or more persons, entities, bodies politic or political subdivisions designated by the United States and FMC upon the total payment of One Thousand Dollars (\$1,000) to EDA, which conveyance shall occur on the later of the eighth anniversary date or 30 days after the Prospective Purchasers receive written notice of the persons, entities, bodies politic or political subdivision so designated by the United States and FMC. The documents will further provide that EPA and FMC, if they both agree at their sole discretion, can extend the time of payment for the

unsold Property beyond the eighth anniversary date. In such event, the time of payment shall be the earlier of the date on which the Property is sold or 90 days after written demand by FMC and the United States for payment or conveyance is received by the Prospective Purchasers. If the Property is sold, the amount of payments to FMC, the United States and the Trustee shall be as described above with respect to the division of net proceeds from a sale. If the Property is not sold, the Prospective Purchasers shall have the option either (1) to pay to FMC, the United States and the Trustee, 90 days after such written demand by FMC and the United States, amounts equal to the net proceeds that would have been payable to FMC, the United States and the Trustee had the unsold Property been sold for fair market value on the date of the written demand for payment by FMC and the United States; or (2) to convey the unsold Property, with general warranties of title, to one or more persons, entities, bodies politic or political subdivisions designated by the United States and FMC upon the total Payment of One Thousand Dollars (\$1,000.00) to EDA, which conveyance shall occur on the later of 90 days after such written demand by FMC and the United States or 30 days after EDA receives written notice of the persons, bodies politic or political subdivisions so designated by the United States and FMC.

f. The documents to be executed by EDA will provide that no additional consideration will be paid by the EDA to EPA or FMC for any portion of the property which is designated in this Agreement for recreational or conservancy use and is used for such purposes, but that if the land use restrictions placed upon the respective portions of the Property subsequently are changed by written approval of the United States, and EDA subsequently sells or transfers any such portion of the Property for commercial or industrial use, EDA will pay to the

United States, FMC and the Trustee their share of the net proceeds as set forth in the preceding paragraphs of this Paragraph relating to sales of the Property or portions thereof.

g. The documents to be executed by EDA will provide that if EDA renovates the “Office Building Site” as shown on Exhibit “B,” no additional consideration will be paid by EDA to FMC, the Trustee or the United States for the said buildings or for real property of not more than 3.23 acres consisting of the real property immediately underneath those buildings, real property adjacent to those buildings needed to comply with local parking requirements and the roadway leading from Kendrick Lane to those buildings for as long as EDA owns those buildings and real property. The documents will further provide that if those buildings, under lying or adjacent real property and/or roadway are sold or transferred by EDA to a third party or parties, the net proceeds from any such sale or transfer shall be divided and paid as provided above, except that “net proceeds” from the sale of those buildings shall also include a reduction from the gross sales price equal to the actual costs incurred by EDA in renovating the said buildings; provided, however, that such reductions for the gross sales price shall not include costs paid directly or indirectly from grant funds received by the Prospective Purchasers or from rent or other payments made by FMC to EDA for FMC and others to occupy and use part of said buildings during the conduct of the cleanup response actions undertaken at the Avtex Property.

IV.B. UNDERTAKINGS

21. The Prospective Purchasers will use their best efforts to apply for any non-CERCLA grant funds that may be available or might become available to pay the costs of certain work at the Property, which work will involve the demolition of certain other buildings, improvements and structures remaining on the Property; the removal of asbestos-containing materials and lead paint

from the buildings, improvements and structures on the Property; and the disposal of all debris and waste generated from that work, and to apply such grant funds which are received towards payment of that additional work.

22. Warren County and Front Royal will apply unpaid real estate tax charges and liens which have accrued against the Property to the date of this Agreement toward the purchase of the Property from the Trustee, and will cause the release of record of such liens as being marked "paid." As of September 22, 1999, the Warren County accrued tax liens against the property are in the amount of \$1,236,763.95; and the Front Royal accrued tax liens accrued against the Property are \$275,643.38.

23. The Prospective Purchasers will pay to the Trustee the sum of Sixty Thousand Dollars (\$60,000.00) which will be utilized by the Trustee to pay costs and fees incurred by the Trustee with respect to (1) the Real Estate Contract between the Prospective Purchasers and the Trustee, which provided for the resolution of the issue of title to the Property in the Avtex Fibers Chapter 11 bankruptcy proceeding; and, (2) for the resolution of the bankruptcy proceeding itself, including the Trustee's placement of land use restrictions on the Property and the grant to EPA, its authorized officers, employees, representatives, and all other persons performing actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property, for the purpose of performing and overseeing response actions under federal law in connection with any Existing Contamination, which actions by the Trustee are beneficial to the United States.

24. The Prospective Purchasers agree (1) that for so long as any portion of the Property is owned by the EDA consistent with the statutory purposes and duties established for industrial development authorities under the laws of the Commonwealth of Virginia, and for so long as real

properties owned by industrial development authorities are exempt under the laws of the Commonwealth of Virginia, that real estate tax liens will not accrue against such portion or portions of the Property; and (2) that if real estate tax liens accrue against the Property prior to the time that the mortgage or deed or trust in favor of FMC, the Trustee, and the United States is satisfied in full, the Prospective Purchasers shall be liable in damages to FMC, the Trustee and the United States in an amount equal to the accrued real estate tax liens.

25. The Prospective Purchasers will pay to the Conservation District the sum of Five Thousand Dollars (\$5,000) within 30 days of the effective date of this Agreement. The payment shall be in the form of a certified check or checks made payable to the Lord Fairfax Soil and Water Conservation District. Payment shall be forwarded by first class mail to:

Edward Ward, Chairman
Lord Fairfax Soil and Water
Conservation District
130 Carriebrooke Drive
Stephens City, VA 22655

26. Amounts due and owing the United States pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

27. Commencing upon the date that the Prospective Purchasers acquire title to the Property, the Prospective Purchasers agree to provide to EPA, its authorized officers, employees, representatives, and all other persons performing actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is

required for the implementation of response actions at the Property, to the extent access to such other property is controlled by the Prospective Purchasers for the purpose of performing and overseeing response actions under federal law in connection with any Existing Contamination. EPA agrees to provide reasonable notice to the Prospective Purchasers of the timing of response actions to be undertaken at the Property. The Prospective Purchasers agree they will cooperate fully with FMC and EPA in obtaining, executing and providing to the United States or FMC any and all agreements and easements required under paragraph 41 of the Consent Decree filed in United States of America v. FMC Corporation, Civil Action No. 5:99 CV 00054 (W.D.Va.). Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, (“RCRA”) et seq., and any other applicable statute or regulation, including any amendments thereto.

28. Within 30 days after the effective date of this Agreement, the Prospective Purchasers shall record a certified copy of this Agreement with the Clerk of the Circuit Court of Warren County, Virginia, said Clerk being the Recorder of Deeds, Front Royal, Warren County, Virginia. Thereafter, each deed, title or other instrument conveying an interest in the Property and/or any subdivision thereof shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

29. The Prospective Purchasers shall ensure that any and all transferees, assigns, successors in interest, lessees, and sublessees of the Property or any other interest holder of the

Property and/or any subdivision thereof shall provide the same access and cooperation. They shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property and/or any subdivision thereof are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

VI. DUE CARE/COOPERATION

30. The Prospective Purchasers shall exercise due care at the Property with respect to any Existing Contamination and shall comply with all applicable local, state and federal laws, and regulations. The Prospective Purchasers recognize that the implementation of response actions at the Property pursuant to the Consent Decree may interfere with their use of the Property, and may require closure of their operations or a part thereof. The Prospective Purchasers agree to cooperate fully with EPA in the implementation of response actions at the Property pursuant to the Consent Decree. The Prospective Purchasers understand and agree that the Consent Decree response activities and redevelopment will occur in a phased approach. The Prospective Purchasers understand and agree that under the Consent Decree, EPA will determine when each response phase has been completed. The Prospective Purchasers understand and agree that the Property shall only be used in a manner which is consistent with the Consent Decree; EPA's response action selection documents (action memoranda and records of decision) and with the obligations or restrictions set forth in the Conservation Easement which is attached as Exhibit "D". The Prospective Purchasers further agree not to interfere with or adversely affect the integrity or protectiveness of the response actions to be implemented at the Property. EPA

agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Prospective Purchasers' operations by such entry and response. In the event that the Prospective Purchasers become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, they shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

31. By entering into this Agreement, the Prospective Purchasers certify that to the best of their knowledge and belief, they have fully and accurately disclosed to EPA all information known to them and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and that each of them are qualified to entered into this Agreement with the United States. The Prospective Purchasers also certify that to the best of their knowledge and belief, they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property, and that their involvement with the Property prior to the Effective Date of this Agreement has been limited exclusively to the following:

a. The County of Warren and the Town of Front Royal have levied statutorily authorized real estate taxes, and concomitant liens, on the property, and have from time to time examined and assessed the property for tax valuation purposes.

b. The EDA has, by itself and through its committees and agents, inspected the Property on several occasions, to ascertain its condition and its potential uses in the future. The EDA further had a comprehensive inspection and study of the Avtex Site prepared by North American Realty Advisory Services to aid the redevelopment and provide data regarding future uses for the Property.

c. Front Royal's Department of Parks and Recreations youth soccer league has used Ed Stump Park for soccer fields and other athletic events.

d. From on or about August 13, 1973, to the present, the EDA has owned equipment and three parcels of land at the Property (including the Waste Water Treatment Plant); the equipment and parcels of land were leased to FMC as of June 1, 1973; FMC subsequently subleased the equipment and parcels of land to Avtex Fibers, Inc. and/or Avtex Fibers-Front Royal, Inc. The EDA hereby states that it owned said property solely to protect its security interests in a bond issue venture entered into to enhance the Waste Water Treatment Plant, which plant was used to protect the river from unlawful releases of hazardous substances at or from the Avtex Site. The EDA hereby states that it did not participate in the management of the relevant equipment and property and it held indicia of ownership to protect its security interest in regard to the bond issue.

32. If the United States determines that information provided by any of the Prospective Purchasers is not materially accurate and complete, this Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

33.a. Subject to the Reservations of Rights in Section IX of this Agreement, upon payment of the amounts specified in Section IV (Payments), of this Agreement, the United States covenants not to sue or take any other civil or administrative action against the Prospective Purchasers for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607 (a), with respect to any Existing Contamination.

b. The United States covenants not to sue or take any other civil or administrative actions against the Conservation District or the Conservation Council for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107 (a) of CERCLA, 42 U.S.C. §§ 9606 or 9607 (a), with respect to any Existing Contamination.

IX. RESERVATION OF RIGHTS

34. The covenants not to sue set forth in Section VIII above do not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against the Prospective Purchasers with respect to all other matters, including but not limited to, the following: a) claims based on a failure by the Prospective Purchasers to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs); b)

any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property caused or contributed to by the Prospective Purchasers, their successors, assignees, lessees or sublessees; c) the interference by the Prospective Purchasers, their successors, assignees, lessees or sublessees with the response actions at the Property pursuant to the Consent Decree or any failure to cooperate with EPA and/ or FMC in the implementation of response activities pursuant to the Consent Decree; d) any liability resulting from exacerbation by the Prospective Purchasers, their successors, assignees, lessees or sublessees, of any Existing Contamination; e) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination; f) criminal liability; liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; g) and liability for violations of local, State or federal law or regulations.

35. With respect to any claim or cause of action asserted by the United States, the Prospective Purchasers shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

36. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

37. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Property or to seek to compel parties other than the Prospective

Purchasers to perform or pay for response actions at the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. The Prospective Purchasers acknowledge that they are purchasing property where response actions will be conducted pursuant to the terms of the Consent Decree and EPA's future selected response actions.

X. SETTLING RESPONDENTS' COVENANT NOT TO SUE

38. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Property, the Conservation Easement, or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Property, or any claims arising out of response activities at the Property, including claims based on EPA's oversight of such activities or approval of plans for such activities.

39. The Prospective Purchasers reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of their plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

40. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding on the Settling Respondents, their officers, directors, employees, and agents. Each signatory of a party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party.

41. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person with the prior written consent of the EPA in its sole discretion.

42. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property or any subdivision thereof, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property or any subdivision thereof, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XII. DISCLAIMER

43. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by any Existing Contamination nor constitutes any representation by EPA that the Property is fit for any particular purpose.

XIII. DOCUMENT RETENTION

44. The Prospective Purchasers agree to retain and make available to EPA all business and operating records, contracts, Property studies and investigations, and documents relating to operation at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, they shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

45. If the Prospective Purchasers fail to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payments) of this Agreement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

46. All notices and submissions provided pursuant to this Agreement shall be forwarded to the following addressees:

As to the United States:

Bohdan Mykijewycz (3HS50)
Prospective Purchaser Agreement Coordinator
U.S. Environmental Protection Agency

1650 Arch Street
Philadelphia, PA 19103

Wayne R. Walters (3RC41)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Bonnie Gross (3HS23)
EPA Project Coordinator
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-3-372A

As to the EDA, Warren County and Front Royal

Stephen A. Heavener
Executive Director
Front Royal /Warren County Industrial
Development Authority
106 Chester Street
Front Royal, VA 22630

Douglas W. Napier
County Attorney
22 South Royal Avenue
Front Royal, VA 22630

As to FMC

William G. Cutler
FMC Project Manager
FMC Corporation
1735 Market Street
19th Floor

Philadelphia, PA 19103

John F. Stillmun
Environmental Counsel
FMC Corporation
1735 Market Street
19th Floor
Philadelphia, PA 19103

As to the Conservation District

Edward Ward, Chairman
Lord Fairfax Soil and Water
Conservation District
130 Carriebrooke Drive
Stephens City, VA 22655

As to the Conservation Council

Stephen E. Talley
Water Protection Specialist
Valley Conservation Council
P.O. Box 2335
Staunton, VA 24402

As to the Trustee

Anthony H. Murray, Jr.
Anthony H. Murray, Jr., Inc.
Neshaminy Plaza II, Suite 207
3070 Bristol Pike
Bensalem, PA 19020

Aris J. Karalis
Ciardi, Maschmeyer & Karalis
1900 Spruce Street
Philadelphia, PA 19103

The parties agree that the above identified addressees may be changed by written notice to the other parties.

XVI. EFFECTIVE DATE

47. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA and the Assistant Attorney General continue to consent to this Agreement following review of and response to any public comments received.

XVII. TERMINATION

48. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that any other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination received written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

49. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Property with respect to any Existing Contamination.

50. The Settling Respondents agree that with respect to any suit or claim for contribution brought by it for matters related to this Agreement they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

51. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against them for matters related to this Agreement they will notify in writing the United States within ten (10) days of service of the complaint on them.

XIX. EXHIBITS

52. Exhibit “A” is a “ Property Location Map”, showing where the Property is located relative to Front Royal in Warren County, Virginia.

53. Exhibit “B” is drawing No 295-194 dated September 29, 1999 prepared by March & Legge, Land Surveyors, of Winchester, Virginia. Exhibit “B” identifies the Property which is the subject of the conveyance from the Avtex estate to the EDA.

54. Exhibit “C” is an outline of the cleanup response actions to be taken at the Property pursuant to the terms of the Consent Decree.

55. Exhibit “D” is the Conservation Easement.

XX. REMOVAL OF LIEN

56. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), and execution of the documents described in Paragraph 20(b) above, EPA agrees to remove any lien it has or may have on the Property under Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), as a result of response actions conducted by EPA at the Property.

XXI. NATIONAL PRIORITIES LIST

57. Based on current available information and subject to the Reservation of Rights in Section IX of this Agreement, EPA intends to delist parcels of the Property from the National

Priorities List under Section 105(a)(8) of CERCLA, 42 U.S.C. § 9605(a)(8), upon its determination that as a result of response actions conducted at the Property, the parcel to be delisted does not present a threat to human health or the environment. Delisted parcels are subject to EPA's Five-Year Review process pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

XXII. PUBLIC COMMENT

58. This Agreement shall be subject to a thirty-day public comment period, after which EPA and/or the Assistant Attorney General may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. The effective date of this Agreement will then be governed by the provisions of Section XVI "Effective Date".

IT IS SO AGREED:

UNITED STATES OF AMERICA

LOIS J. SCHIFFER
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

Date

JAMES A. LOFTON
Senior Counsel
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice

Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

BRADLEY M. CAMPBELL
Regional Administrator
Region III
U.S. Environmental Protection Agency

Date

IT IS SO AGREED:

INDUSTRIAL DEVELOPMENT AUTHORITY OF
TOWN OF FRONT ROYAL AND COUNTY OF WARREN

BY:

RICHARD NOVAK, Chairman

Date

STEPHEN A. HEAVENER, Executive Director
Industrial Development Authority of
Town of Front Royal and County of Warren
d/b/a Economic Development Authority

Date

COUNTY OF WARREN, VIRGINIA

BY:

Board of Supervisors
County of Warren, Virginia

Date

TOWN OF FRONT ROYAL , VIRGINIA

BY:

, Mayor
Town of Front Royal, Virginia

Date

STATE OF VIRGINIA

COUNTY OF WARREN, TO-WIT:

The foregoing Agreement and Covenant Not To Sue was subscribed and acknowledged before me this ____ day of _____, 1999, by RICHARD NOVAK, CHAIRMAN, Industrial Development Authority of Town of Front Royal and County of Warren, d/b/a Economic Development Authority.

My commission expires:_____

NOTARY PUBLIC

STATE OF VIRGINIA

COUNTY OF WARREN, TO-WIT:

The foregoing Agreement and Covenant Not To Sue was subscribed and acknowledged
before me this ____ day of _____, 1999, by _____, Board of
Supervisors, County of Warren, Virginia.

My commission expires: _____

NOTARY PUBLIC

STATE OF VIRGINIA

COUNTY OF WARREN, TO-WIT:

The foregoing Agreement and Covenant Not To Sue was subscribed and acknowledged
before me this ____ day of _____, 1999, by _____, Mayor, Town
of Front Royal, Virginia.

My commission expires: _____

NOTARY PUBLIC

IT IS SO AGREED:

LORD FAIRFAX SOIL AND WATER CONSERVATION DISTRICT

BY:

EDWARD WARD, Chairman
Lord Fairfax Soil and Water Conservation District

IT IS SO AGREED:

VALLEY CONSERVATION COUNCIL

BY:

ROBERT WHITESCARVER

Chairman

Valley Conservation Council